

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

VINCENTE PEREZ-GALLARDO,
MIGUEL CISNEROS-ALVAREZ,

Defendant.

NO. CR-04-2170-LRS
CR-04-2171-LRS

**ORDER GRANTING GOVERNMENT'S
MOTION TO DISMISS COUNT ONE OF
THE INDICTMENT; DENYING MOTION
FOR JUDGMENT OF ACQUITTAL;
DECLARATION OF MISTRIAL**

This Order is entered to memorialize and supplement the oral rulings of the Court in the above referenced matters on April 18-20, 2005.

1. On April 18, 2005, prior to the start of trial, the government orally moved to dismiss count one of the indictment. The Court **GRANTED** the government's motion for dismissal of count one of the indictment without prejudice. The court makes no judgment as to merit or wisdom of this dismissal.

2. On April 19, 2005, at the close of the government's case the defendants orally moved for judgment of acquittal pursuant to Fed.R.Crim. Procedure 29, at which time, for the reasons stated on the record, the Court **DENIED** the motions.

1 3. At the defendants' jury trial on April 18-20, 2005, the jury
2 did not return a unanimous verdict as required by Fed.R.Crim.Proc. 31(a).
3 Upon being questioned by the undersigned in open court, the presiding
4 juror indicated that the jury was unable to reach a verdict as to one or
5 both defendants and that additional time would not be helpful. The
6 undersigned judge then asked each member of the jury whether it was their
7 belief the jury was hopelessly deadlocked. Each member responded, "yes."

8 A truly deadlocked jury represents an instance of manifest necessity
9 requiring the declaration of a mistrial. *Arizona v. Washington*, 434
10 U.S. 497, 509, 98 S.Ct. 824, 832, 54 L.Ed.2d 717 (1978). Considering the
11 jurors' responses, the complexity of the case, the length of the trial,
12 and the length of the jury's deliberation, the Court found the jury to
13 be truly deadlocked, declared a mistrial, and discharged the jury.

14 According to statute, if either of the defendants are going to be
15 tried again, **the trial must begin within SEVENTY (70) DAYS** from **April 20,**
16 **2005**, the date the Court declared a mistrial. 18 U.S.C. § 3161(e). See
17 also 18 U.S.C. § 3162(a)(2).
18

19 ACCORDINGLY, **IT IS HEREBY ORDERED** a status conference to discuss the
20 the pending matters shall be held on **May 5, 2005 at 9:30 a.m.** in Yakima,
21 Washington. The defendants shall be present.
22

23 **IT IS SO ORDERED.** The District Court Executive is directed to
24 file this Order and provide copies to the parties, provide copies to

25 ///

26 ///

1 all counsel, the U.S. Probation Office, the U.S. Marshal, and the Jury
2 Administrator.

3 DATED this 20th day of April, 2005
4

5 *s/Lonny R. Suko*

6 _____
7 LONNY R. SUKO
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26